

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

Aug 24, 2023

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOSE GARCIA-MERAZ,

Defendant.

No. 4:23-CR-06004-MKD

ORDER ACCEPTING GUILTY PLEA  
AND SETTING SENTENCING  
SCHEDULE

On August 24, 2023, Jose Garcia-Meraz appeared before the Court and entered a plea of guilty to the single count Indictment filed on February 22, 2023, charging him with alien in the United States after deportation, in violation of 8 U.S.C. § 1326. Defendant was represented by Carter Powers Beggs. Assistant United States Attorney Todd Swensen appeared on behalf of the United States.

The Court finds that Defendant is fully competent and capable of entering an informed plea, that Defendant is aware of the nature of the charges and consequences of the plea, and that the plea of guilty is knowing, voluntary, is not induced by fear, coercion, or ignorance, and is supported by an independent basis

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1 in fact establishing each of the essential elements of the crime. Therefore,  
2 Defendant's plea of guilty is accepted.

3 Accordingly, **IT IS HEREBY ORDERED:**

4 1. A sentencing hearing is set for **December 7, 2023, at 11:00 a.m.**, in  
5 Richland Courtroom 189. Absent truly exigent circumstances, the Court will not  
6 consider a request for a continuance of sentencing unless: (1) the request is made  
7 by written motion, (2) in accordance with LCivR 7, and (3) the motion and  
8 supporting declaration are filed at least seven (7) days before the scheduled  
9 sentencing hearing.

10 2. Defendant shall remain released to pretrial supervision pursuant to the  
11 conditions of release previously imposed in this matter. ECF Nos. 21, 23. **If a**  
12 **sentence of incarceration is imposed, Defendant shall be taken into custody at**  
13 **the time of sentencing.**

14 3. The United States Probation Office shall prepare a Presentence  
15 Investigation Report (PSR) pursuant to Fed. R. Crim. P. 32(c).

16 4. Not later than **October 27, 2023**, the Probation Officer shall disclose the  
17 PSR to Defendant, counsel for Defendant, and the United States. Disclosure of the  
18 PSR shall be subject to the limitations imposed by Rule 32 of the Federal Rules of  
19 Criminal Procedure.

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1           5. Within 14 days of the disclosure of the PSR, counsel shall communicate  
2 in writing to the Probation Office (and opposing counsel) any objections they may  
3 have as to legal and factual errors or omissions; sentencing classifications;  
4 sentencing guideline ranges; and policy statements contained in or omitted from  
5 the report. Objections shall be numbered and identify the paragraph(s) to which  
6 the objection applies. Objections shall address the PSR in sequential order,  
7 beginning with the lowest numbered paragraph. If an objection is filed, the  
8 Probation Officer shall conduct such additional investigation as is necessary to  
9 assess the merits of the objection.

10           6. The Probation Officer shall submit the final PSR to the Court by  
11 **November 27, 2023**. The PSR shall be accompanied by an addendum setting forth  
12 any objections counsel may have made, including those that have not been  
13 resolved, together with the officer's comments and recommendations thereon. The  
14 Probation Officer shall certify that the contents of the report, other than the  
15 sentencing recommendations, including any revisions or addenda, have been  
16 disclosed to counsel for Defendant and the United States, and that the addendum  
17 fairly states any remaining objections. Except with respect to any written objection  
18 made as required above, the PSR and computations shall be accepted by the Court  
19 as accurate. Upon a timely objection by Defendant, the United States bears the  
20 burden of proof on any fact that is necessary to establish the base offense level.

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1 The Court, however, for good cause shown, may allow that a new objection be  
2 raised at any time before the imposition of sentence. In resolving any disputed  
3 issues of fact, the Court may consider any reliable information presented by the  
4 Probation Officer, Defendant, or the United States.

5 Nothing in this Order requires the disclosure of any portions of the PSR that  
6 are not disclosable under Fed. R. Crim. P. 32. The PSR shall be deemed to have  
7 been disclosed: (1) when a copy of the report is physically delivered; or (2) one  
8 day after the report's availability for inspection is orally communicated; or (3)  
9 three days after a copy of the report or notice of its availability is mailed to  
10 counsel, whichever date is earlier.

11 7. Not later than **November 22, 2023**, counsel shall file and serve all  
12 motions and memoranda pertaining to Defendant's sentence, including departures  
13 and variances, and sentencing recommendations.

14 a. Counsel shall utilize the following format when preparing initial  
15 sentencing memoranda which are limited to 20 pages (absent prior  
16 Court permission to file an overlength brief): I. Offense Level &  
17 Criminal History, II. Departures, III. 18 U.S.C. § 3553(a).

18 b. Under Section I. Offense Level & Criminal History, counsel shall  
19 discuss whether the PSR's Total Offense Level calculations (not  
20

1 including departures) and Criminal History calculation are correct or  
2 incorrect, providing legal authority for the party's position.

3 c. Under Section II. Departures, counsel shall discuss whether a  
4 downward and/or upward departure is warranted under the Guidelines  
5 and provide legal authority for such position.

6 d. Under Section III. 18 U.S.C. § 3553(a), counsel shall discuss whether  
7 the resulting guideline range provides a reasonable sentence  
8 sufficient, but not greater than necessary to comply with the purposes  
9 set forth in 18 U.S.C. § 3553(a)(2), considering the other factors listed  
10 in § 3553(a).

11 e. **FAILURE TO FILE AND SERVE SENTENCING MATERIAL**  
12 **BY THIS DATE, TO INCLUDE MOTIONS OR MEMORANDA**  
13 **FOR UPWARD OR DOWNWARD DEPARTURE, WILL BE**  
14 **DEEMED A WAIVER OF THE RIGHT TO DO SO.**

15 8. Not later than **November 30, 2023**, the opposing party shall file and  
16 serve its response limited to no more than seven (7) pages.

17 9. If Defendant intends to qualify for the safety valve, the parties must  
18 schedule a meeting to conduct a safety valve interview to determine if the  
19 Defendant has met the requirements of U.S.S.G. § 5C1.2(a)(5) **no later than**  
20 **November 16, 2023.**

1           10. If either party intends to call witnesses or proffer exhibits at sentencing,  
2 witness and exhibit lists must be exchanged by the parties and provided to the  
3 Court no later **November 30, 2023**.

4           11. Sentencings shall be scheduled for a total of 45 minutes. If it is believed  
5 that the sentencing hearing will last longer than 45 minutes, counsel shall contact  
6 Chambers no later than **November 30, 2023**.

7           12. All pending motions pertaining to Defendant are **DENIED as moot** and  
8 all pending hearing and trial dates pertaining to Defendant are **STRICKEN** from  
9 the Court's calendar.

10           13. By and through this Order, the District Court Executive is authorized to  
11 accept Defendant's payment in the amount of \$100 toward Special Penalty  
12 Assessments.

13           **IT IS SO ORDERED.** The District Court Clerk is hereby directed to enter  
14 this Order and provide copies to counsel, the United States Probation Office, and  
15 the United States Marshals Service.

16           DATED August 24, 2023.

17  
18                               s/Mary K. Dimke  
19                               MARY K. DIMKE  
20                               UNITED STATES DISTRICT JUDGE

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